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Attorney for Defendant David Bruce Corbit

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

No. 3:14-CR-00093-MO-1

v.

**DEFENDANT'S REQUEST
FOR DISCOVERY**

DAVID BRUCE CORBIT,

Defendant.

INTRODUCTION

Pursuant to Federal Rule of Criminal Procedure 12, the defendant, David Bruce Corbit, by and through his attorney Michele L. Kohler, hereby requests that the United States Attorney disclose, produce, and make available for examination and copying by defense counsel the following items, whether currently in the possession, custody, control, or knowledge of the United States Attorney, the agents or

representatives of the United States Attorney, and/or any law enforcement agent, or which by the exercise of due diligence may become known to the attorneys for the government.

The defendant makes this request for the purpose of promoting an expeditious and fair determination of the charges, whether by plea or trial; providing the defendant sufficient information to make an informed plea; permitting the defendant thoroughly to prepare for trial and to minimize surprise at trial; avoiding unnecessary delay and/or repetitious trials by exposing any latent procedural or constitutional issue and affording remedies therefore prior to trial; reducing interruptions and complications of trial by identifying issues collateral to guilt or innocence and determining them prior to trial; effecting economies of time, money, judicial and professional talents by minimizing paper work, repetitious assertions of issues, or number of separate hearings; affording the defendant the opportunity for effective cross-examination; and meeting the requirements of procedural due process guaranteed to the defendant.

DEFINITION OF TERMS

As used in this request, the phrase "the Government" includes the government of the United States, any agency or department thereof, any state, local or foreign jurisdiction hereafter identified, and any of their agents or employees who aided, abetted, counseled, procured or participated in any investigation or prosecution (1) related to or arising out of any of the facts to which reference is made in the Indictment or (2) of any of the persons named therein, whether or not as a defendant and whether or not related to or arising out of any of the facts to which reference is made in the Indictment.

As used in this Motion, the phrase "information and material" refers to information and material presently in the possession of the Government and all information and material which subsequently comes into the possession of the Government. The defendant requests the Court to order the Government to produce such information and material on a continuing basis without need for further demand by the defendant.

In ordering compliance with this discovery request, the defendant further requests the United States Attorney to make an affirmative inquiry of agencies and departments of the United States and state, local, and foreign jurisdictions to determine whether any of them has in its possession any information or material responsive to this Motion, and if so, immediately to make such available to the United States Attorney so that disclosure can then be made to the defendant substantially in advance of trial, without further demand, and in sufficient time to allow the defendant to use it effectively in his defense.

In the event the government refuses to provide any and all disclosure, the defendant requests that the United States Attorney produce such information *in camera* for inspection and determination by the Court of whether such information shall be disclosed to the defendant.

INFORMATION AND DISCOVERY DEMANDED

The information and material which the defendant request be made available for discovery, inspection and copying is as follows:

1. All disclosure required by Federal Rule of Criminal Procedure 16. The filing of this demand is supplemental to that explicitly addressed in the above rule and is

not to be construed as a waiver or modification of the defendant's right to mandatory, automatic disclosure by the Government in compliance with said rule.

2. Notice as required by Federal Rules of Criminal Procedure 12(b)(4)(B) of the Government's intention to use in its case in chief any evidence discoverable under Federal Rule of Criminal Procedure 16.

3. All information and material in the Government's possession favorable to the defendant on the issue of guilt, including any evidence which would tend to impeach any Government witness, and including but not limited to the following:

(a) All information and material, including memoranda, notes, records or correspondence, maintained or in the possession of the Government or any other law enforcement agency regarding contacts, discussions, or agreements with the defendants or persons identified as "confidential source," "cooperating witness" and/or "undercover agent";

(b) All records, logs, calendars, or similar documents reflecting contacts between the defendant and any law enforcement officer at any time, including but not limited to audio recorded interviews, all audio and documentation of dispatch records of the events and MDT displays of officer's in-car computers during the time of the offense until reassigned to another call or shift-end, whichever came first;

(c) All personnel files of any law enforcement officer whose notes, memoranda, calendars or other materials are produced pursuant to

Subparagraphs (a) and (b), *supra*.

(d) All notes, minutes, records, exhibits, recordings, testimony and transcripts of testimony of any Grand Jury that considered any part of the transaction or transactions for which the defendant stands indicted.

4. All information and material relating to or otherwise tending to record or communicate any:

(a) Oral, written or recorded statements made by defendants to investigating officers or third parties and in the possession of the Government;

(b) Oral, written or recorded statements, and all original notes or memoranda regarding the statements of any person whom the Government may call as witness at any stage of the proceedings in this case;

(c) Oral, written and recorded statements and all original notes and memoranda regarding the statements of any person whom the Government may call as a witness at any stage of the proceedings in this case reflecting a change, modification or alteration of a prior statement;

5. All physical or documentary evidence in the Government's possession with respect to this case, whether intended to be offered as evidence or not, so that defendant may examine the same for exculpatory evidence.

6. All information and material relating to or otherwise tending to record or communicate any oral, written or recorded statements of the defendants or any person

whom the Government contends is an agent of the defendant, whether or not indicted or named in the indictment, whether or not the Government intends to produce evidence or testimony regarding such statements or call any such person(s) as a witness at any stage of the proceedings in this case.

7. Production of any book, paper, document, photograph or tangible item which the government:

- (a) Obtained from or which it may alleged belonged to the defendant; or
- (b) Obtained from or which it may be alleged was located at the defendants' residence, place of business, in his vehicle or at some other place in which the defendant had a reasonable expectation of privacy; or
- (c) Will use at any pretrial hearing or at trial.

8. All records of the Government (1) pertaining to, discussing or describing any matter or transaction to which the defendant or any person whom the Government may contend participated in such matter or transaction on behalf of a defendant was a party, concerning which the Government intends to offer evidence in this case; or (2) concerning any policy or practice the implementation of which may have affected any matter or transaction relevant to this case, including but not limited to the policy or regulations dealing with "claims of restitution for injuries sustained by authorized acts of law enforcement agents" and "complaints."

9. All reports, including scientific tests or psychological profiles/evaluations ordered by or under the auspices of any state, federal or foreign regulatory or

investigative agency concerning the defendant or any tangible items involved in this case, whether or not the Government intends to offer such evidence at any stage of the proceedings.

10. Disclosure of the following:

(a) Whether the Government intends to offer evidence relating to any act of the defendants, of a nature similar to that alleged in the indictment. If so, specify the details thereof.

(b) Computer printouts, FBI or local law enforcement record forms, judgment orders or other documents reflecting any arrest, prior conviction, or administrative sanction imposed upon any person whom the Government may call or intend to call as a witness in this matter.

(c) Computer printouts, FBI or local law enforcement record forms, judgment orders or other documents reflecting any prior criminal record of the defendant.

(d) All information or material regarding any financial, protective, employment, personal, or other similar relationship that has existed or presently exists between the Government or any potential witness or other person who was or may have been present at, party to, or aware of any fact, act, circumstances or event involved in any transaction pertinent to this indictment.

(e) All information or material reflecting or relating to whether the Government has made or attempted to make any promise, assurance, or

arrangement with any person or prospective witness in this case, either expressed or implied, securing the assistance and/or testimony of such person or witness for the Government.

(f) Whether or not the Government has contacted any judge or correction official having jurisdiction over any person who may be summoned as a witness by the Government; and, if so, the names and addresses of same and the contents of such communications.

(g) Whether or not the Government has contacted any prosecution, probation or parole officer or person holding comparable position of authority or responsibility over any person who may be summoned as a witness by the Government; and, if so, the names and addresses of same and the contents of such communications.

(h) Whether any payment of any sort has been made by the Government to any prospective witness; and, if so, disclosure of the following information and material:

- (i) All payment vouchers pertaining to such witness issued by the Government or any other agency;
- (ii) Any other documentary records reflecting payment pertaining to such witness;
- (iii) An accounting reflecting the dates and amounts of all such payments;

(iv) All records of any other tangible and intangible

benefits provided to any such person by any such agency.

(i) Whether or not any discussion between any "confidential source" or other person and any Government employee has occurred pertaining to a "claim" by the "confidential source" or other person for a "reward" or other compensation pursuant to any Government statute or regulation and copies of any such "claim" which have been submitted.

11. Disclosure of the following information and material to the defendant:

(a) Will the Government call an expert witness or witnesses? If so, the defendant requests the name or names of such persons, their qualifications, the subject of their testimony, of all reports or examinations conducted by or relied upon by such persons.

(b) Reports of tests, physical or mental examinations of any person who may be a witness in this case.

(c) Reports or scientific tests, experiments or comparisons and other reports of experts under the control of or known to the Government which the Government intends to rely upon to establish any material matter relating to the allegations of the indictment.

12. All information and material (including search warrant affidavits) concerning any search by state or federal agencies which resulted in the observation of any matter about which a witness may be asked to testify at any stage of this proceeding

or the seizure of any tangible or intangible items, whether or not the Government intends to offer such at any stage of this proceeding. This request encompasses all information obtained from any observation, search or seizure, all evidence concerning the circumstances of such search or seizure, and the circumstances of the acquisition of any evidence from such. This request is made in good faith and in the interest of justice and is necessary to enable the defendant to prepare motions to suppress evidence under Federal Rule of Criminal Procedure 41(h).

13. All information and material pertaining to any electronic surveillance or video or audio recording of the defendants or of any person whom the Government may contend to be an agent, servant, co-conspirator or accomplice of the defendants, or any telephone number concerning which the government sought to obtain, or obtained, and/or intends to offer in evidence in this case. This request includes:

- (a) All records and reports of pen registers;
- (b) All records and reports of all telephone conversations;
- (c) All records and reports of all conversations recorded by any listening device, including, but not limited to, microphone;
- (d) All telephone toll records; and
- (e) All records regarding or recording the signals from any electronic tracking device.

14. All information and material relating to any tangible item, document or other material or sample which has been destroyed, including all information and material

relating to the destruction process itself.

15. All information and material of or pertaining to correspondence between the defendants and any regulatory or supervisory agency of the Government.

16. All **Brady** material.

17. The names, agencies and addresses of all law enforcement personnel involved in any investigation of the defendants together with copies of their reports.

18. All information and material obtained from any telephone company, bank, savings and loan, financial institution, brokerage firm, utility or other similar institution or company, public or not, pertaining to any account or transaction of the defendants, whether intended to be used at trial or not, and all documentation utilized in obtaining such material and information, *i.e.*, grand jury subpoena, etc.

19. All information and material obtained from governmental agencies about the defendant which he would be entitled to receive upon request to said agency (*i.e.* motor vehicle records, military records, etc.).

20. All photographs of the defendant taken during surveillance or otherwise obtained.

21. A written list of names and addresses of all persons having knowledge of relevant facts that the Government will not call as witnesses at trial.

22. All statements made by the witnesses or prospective witnesses to any prosecuting attorney at any time which meet the requirements of the Jencks Act, as codified.

23. Any and all logs and other records, surveillance records, photographs or motion picture records, or videotape records, including photocopies pertaining to the defendant.

24. Any and all logs and other records of any and all mail matter sent to or by any defendant, which has been subject to a mail cover or mail opening by the Government, during the period of the investigation leading to the instant Indictment.

25. All documents, exhibits, graphs, displays, charts, computer printouts, and photographs which the Government may or presently intends to offer at trial.

26. Any and all applications to the Court for any and all Orders permitting an intrusion into the privacy of the defendants of whatever kind.

27. Disclosure of all procedures used for purposes of identification, including, but not limited to, photographic displays.

DATED this 12th day of March, 2014.

Respectfully submitted,

by: /s/ Michele L. Kohler
MICHELE L. KOHLER, OSB No. 94359
Attorney for David Bruce Corbit